tion, which the patentee has chosen to claim in addition to the main or principal invention consisting in the complete safety razor.

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"The claims relate to a blade with means to 'cooperate' and to 'retain.' One of the means is stated: it is the centrally disposed opening. The others are referred to merely as 'means spaced from said opening'. If we look at the rest of the specification and at the drawings, to assist in comprehending what these means are, we find that what the patentee had in view and what he intended to claim were four notches or openings, at the ends of the blade, adapted to receive projections extending from the backing member of the razor. So that, so far as concerns the blade, the means disclosed throughout are nothing but holes, one set of means being the central hole and the other, the holes or openings in the ends.

"We would not think the patentee intended to make the broad claim to the monopoly of the right to perforate any and all shapes of holes in a razor blade of the type in question. That alone would be quite sufficient to invalidate the claim, for evidently, having regard to the prior art, the claim would be abnormally wide. * * *

"But the appellant argues the openings in the blade he claims as new are openings with certain functions in the holder and the openings in the earlier blades were not intended to function in the same way as the openings described in the claims in suit. A claim for a blade having openings with certain functions in the holder comes perilously near being a claim for the combination and not a claim for the so-called subordinate invention, for, in such a case, the utility of the holes depends entirely upon their co-operation with the projections in the other members of the razor. In any event, the moment the validity of the subordinate invention is put on that ground, it necessarily limits the form of the holes in the blade to that

of holes shaped in the particular way required to function in the holder and that is to say: to holes precisely as described in the specification for the purpose of functioning in the precise holder therein described.

* * * * * *

"The blade as designed by the respondent may fit the razor patented by the appellant, although it would not fulfil the functions intended in claims 4 and 5—or, at least not in the same way—but it will also fit the bar type razor, the Goodwill razor and other holders, according to the evidence.

"The respondent's blade does not correspond to the blade described in the specification and in the drawings. There was no infringement. Of course, the appellant urges the respondent's blade is substantially similar to the blade used in the Goodwill type of razors. The answer is that the Goodwill blade is not the article disclosed in the patent."

TO SUM UP—

The claims in suit being for a safety razor blade, notched and apertured merely that it may fit its holder, are invalid for lack of invention—whatever the patentable merit of the holder. They are, moreover, anticipated by the expired patents to Hartman and Ballreich, both of which disclose double-edge safety razor blades similarly notched and apertured and inherently capable of performing all the functions of the patented blade. If, however, the claims are to be given such a limited scope as not to be anticipated by Hartman and Ballreich because of asserted differences either in function or structure, then they are not infringed by petitioner's blade for the reasons given by the Circuit Court of Appeals for the Second Circuit in *Gillette Safety Razor Company* v. *Hawley Hardware Company* and by the Supreme Court of Canada in *Gillette Saf-*

ety Razor Company of Canada, Limited, v. *Pal Blade Corporation, Limited, et al.* And finally, it must not be forgotten that for seventeen years respondent enjoyed a monopoly of the wafer-type safety razor blade, and that the Gaisman blade of the patent in suit differs from the blade of the original Gillette patent only in the shape and location of the holes that serve to hold the blade in place in the razor. The present suit is the culmination of a series of suits brought by respondent for the obvious purpose of reviving the blade monopoly lost when its basic patent expired—"the constant efforts of those who have enjoyed a profitable patent monopoly to lengthen such monopoly by patents for non-inventive changes".

This whole litigation wears an aspect of improbability. That the Patent Office in the Year of Grace 1927 should have allowed claims to a safety razor blade whose sole pretense to patentable novelty was a non-circular hole in its middle and notches in its ends is hard enough to believe in all conscience—though such things do sometimes happen; but that infringement of those claims should have constituted the gravamen of two hard fought law suits (three, if we include the Canadian) would be *quite* incredible were the facts not so well attested. . . . We hope that this Court will indicate its unmistakable disapproval of the whole silly and indefensible business.

To this end we pray that the decree of the Circuit Court of Appeals for the Third Circuit be reversed and that of the District Court, dismissing the bill, be affirmed.

Respectfully submitted,

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